

Judge: Christopher M. Alston
Chapter Chapter 7

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF WASHINGTON AT SEATTLE

In re:

RIDGEBACK EXCAVATING, LLC,

Debtor.

EDMUND J. WOOD, solely in his
capacity as Chapter 7 Trustee of the
estate of Ridgeback Excavating, LLC.,

Plaintiff,

v.

ALEA BATTIN AND JOHN DOE
BATTIN, husband and wife and the
marital community composed thereof,

and

CASHABLE, LLC a New York
Corporation,

and

ROBERT COHEN and JANE DOE
COHEN, husband and wife and the
marital community composed thereof,

and

WILLIAM and DONNA JAVINES,
husband and Wife and the marital
community composed thereof,

and

Case No. 22-10259-CMA

COMPLAINT

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1 RANDY KAN and JANE DOE KAN,
2 husband and wife and the marital
community composed thereof,

3 and

4 LENDING CLUB CORP,

5 Defendants.
6

7 Edmund J. Wood, solely in his capacity as Chapter 7 Trustee of the bankruptcy
8 estate of Ridgeback Excavating, LLC, by and through his undersigned counsel, complains
9 as set forth below.

10 I. JURISDICTION AND VENUE

11 1.1 This is an action to avoid preferential transfers, fraudulent transfers, to
12 compel turnover of Property of the Estate and for breach of fiduciary duty.

13 1.2 This is a "core proceeding" pursuant to 28 U.S.C. § 157(b)(2)(E),(F), (H)
14 and (O).

15 1.3 This Court has jurisdiction to hear this complaint pursuant to 28 U.S.C. §
16 157(a) and (b), 1334(a) and (b), and 11 U.S.C. §§ 105, 542, 544, 547, 548, 550 and 551.

17 1.4 This matter has been referred to the Bankruptcy Judges of this District
18 pursuant to General Rule 7 of the Rules for the United States District Court for the
19 Western District of Washington
20

21 1.5 Venue is proper under 28 U.S.C. § 1409.

22 II. PARTIES

23 2.1 Debtor. Ridgeback Excavating, LLC ("the Debtor" or "RBE") filed a
24 voluntary Chapter 7 petition on February 17, 2022 ("Petition Date").

25 2.2 Trustee. Edmund J. Wood ("Wood" or "Trustee") was appointed as the
26 Chapter 7 Trustee for the case on February 17, 2022. The Trustee is authorized to bring
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1 this action pursuant to §§ 105, 542, 544, 547, 548, 550 and 551 of the Bankruptcy Code
2 and does so solely in his capacity as Trustee for the Ridgeback Excavating LLC estate.

3 2.3 **Defendant Alea Battin.** Defendant Alea Battin and John Doe Battin are
4 married and constitute a marital estate. Any act done by one was done for the benefit of
5 the marital community. They are residents of the State of Texas. Alea Battin is the former
6 Managing Member and sole member of the Debtor, is in control of the Debtor and is an
7 insider of the Debtor as defined in § 101(31) of the Bankruptcy Code.

8 2.4 **Cashable, LLC.** Upon information and belief, Cashable, LLC. is a New
9 York Corporation that sells cashable and redeemable guaranteed investment certificates.
10 Cashable conducts business with residents of the State of Washington.

11 2.5 **Robert Cohen and Jane Doe Cohen.** Robert and Jane Doe Cohen are
12 husband and wife and constitute a marital community. Any action taken by one was taken
13 for the benefit of the marital community. Robert and Jane Doe Cohen are both believed to
14 be residents of the State of Washington.

15 2.6 **William and Donna Javines.** William and Donna Javines are husband and
16 wife and constitute a marital community. Any act done by one was done for the benefit of
17 the community. William and Donna Javines are residents of the State of Washington.
18 William and Donna Javines are the parents of Alea Battin and as such are insiders as
19 defined in § 101(31) of the Bankruptcy Code.

20 2.7 **Randy Kan and Jane Doe Kan.** Randy Kan and Jane Doe Kan are
21 husband and wife and constitute a marital community. Any act done by one was done for
22 the benefit of the community. Randy Kan and Jane Doe Kan are believed to be residents
23 of the State of Washington.

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1 2.8 Lending Club. The Lending Club is a corporation believed to be
2 incorporated in the State of Pennsylvania, which has conducted business with the Debtor
3 and other residents of the State of Washington.

4 **III. STATEMENT OF FACTS**

5 **History of Ridgeback Excavating**

6 3.1 Alea Battin ("Alea"¹) and Robert Battin ("Battin") were married. Battin
7 worked at Northern Land Development and had experience in the excavation field and
8 numerous contacts. Alea had worked at previous excavation/construction related
9 businesses. They decided to start their own excavating company.

10 3.2 A co-worker of Battin's at Northern Land Development, Scott Fletcher
11 ("Fletcher"), agreed to go into business with Alea and Battin. Fletcher and Battin were in
12 charge of preparing and performing all of the bidding for contracts and fulfilling and
13 performing any contracts obtained. Alea was in charge of the office.

14 3.3 Ridgeback Excavating, LLC was formed in Washington on May 10, 2017.
15 The Governor was listed as Alea.

16 3.4 On June 5, 2017, an Amended Report was filed which listed the Governors
17 as Battin and Fletcher. On June 15, 2017, an Amended Report was filed which listed the
18 Governors as Battin, Fletcher and Alea.

19 3.5 On September 14, 2017, an Amended Report was filed which listed the
20 Governors as Alea and Mila Fletcher, the wife of Fletcher. On June 1, 2018, the Annual
21 Report was filed which listed the Governors as Alea and Mila Fletcher.

22 3.6 On January 1, 2019, The Annual Report was filed which listed Alea as the
23 only Governor. The 2020 and 2021 Annual Reports list Alea as the only Governor.

24
25
26
27 ¹ The Plaintiff means no disrespect by using Ms. Battin's first name and is doing so only because
28 there are two Battins.

1 3.7 No Annual Report was filed for the years 2022 or 2023. Ridgeback was
2 Administratively Dissolved on February 9, 2023.

3 **Ridgeback Begins Operating with No Capital**

4 3.8 In October of 2017, the Debtor began operating.

5 3.9 There was never any capital contributed to the company. The principals
6 used personal credit cards and advances from upcoming projects to fund the company at
7 the beginning. Once the Debtor was fully operating it started using non-traditional, higher
8 interest loans to fund the company. It also factored most, if not all, of its accounts
9 receivables.

10 3.10 Upon information and belief, the Trustee alleges that by mid-2018 there
11 were substantial disagreements between Battin, Fletcher and Alea relating to all aspects
12 of the business and its operations.

13 3.11 By the end of the fourth quarter of 2018 Fletcher had decided to resign and
14 give up his interest in the Debtor. However, he wanted compensation for his interest.

15 3.12 Upon information and belief, the Plaintiff alleges that Fletcher was paid
16 \$105,000, which was obtained from a refinance of Mr. Battin's residence. On January 16,
17 2019, a 2017 Big T Utility Trailer which had been titled in the name of the Debtor was
18 transferred to Fletcher. Upon information and belief, the Plaintiff alleges that the value of
19 the utility trailer was \$5,000.

20 3.13 Upon information and belief, the Plaintiff alleges that when Fletcher gave up
21 his interest in the Debtor at the end of 2018, the Debtor was already insolvent and unable
22 to pay its bills as they became due.

23 3.14 Alea and Robert continued to operate the company as the Governors once
24 Fletcher left.

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1 3.15 Battin died on February 17, 2020. Thereafter Alea was the sole member
2 and the sole Governor of the Debtor.

3 **Unpaid Taxes**

4 3.16 According to the proof of claim filed by the IRS, claim #7, The Debtor has
5 not filed a tax return or made a payment to the IRS since 2018. The IRS proof of claim is
6 in the amount of \$383,842.83.

7 3.17 According to the proof of claims filed by the State of Washington
8 Department of Revenue, the Debtor owes taxes from January 1 ,2020 through July 31,
9 2021. The WA DOR has filed a proof of claim #6 in the amount of \$166,671.60 for unpaid
10 excise tax.

11 3.18 The Debtor owes taxes to the Washington State Department of Labor &
12 Industries for the 3rd quarter of 2020. It has filed a proof of claim in the amount of
13 \$10,664.66. In 202, 1L&I sought tax warrants against the Debtor.
14

15 3.19 The Debtor has not made a payment of the Locals 302 and 612 of the
16 International Union of Operating Engineers-Employers Training Trust Fund since February
17 of 2020. A Judgment was entered against the Debtor on March 9, 2021 in the amount of
18 \$59,361.18.
19

20 3.20 The Debtor ceased making payments to Northwest Laborers-Employers
21 Trusts in 2019. It has filed a proof of claim in the amount of \$52,450.01.

22 **PPP Loans**

23 3.26 On May 1, 2020, the Debtor executed a Promissory Note with Columbia
24 State Bank for a PPP Loan in the amount of \$109,669.07. The money was deposited into
25 the Debtor's Columbia Bank account ending in 5238. Upon information and belief, the
26 Plaintiff alleges that none or almost none of the money was used for payroll and other
27

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1 approved purposes authorized under the CARES act. Most of the funds was used for
2 payments to factoring companies and non-traditional lenders.

3 3.27 On March 15, 2021 the Debtor and Community Financial Services entered
4 into a Promissory Note for a second PPP Loan in the amount of \$125,712.00. The money
5 was deposited into the Debtor's bank account at Columbia Bank ending in 5238. Upon
6 information and belief, the Plaintiff alleges that none or almost none of the money was
7 used for payroll and other approved purposes authorized under the CARES act.
8 Approximately \$15,000 of the funds were paid directly to Alea. \$78,259.75 was paid to
9 factoring companies and or hard/semi-hard money lenders including Forward Financing,
10 SPG Advance, Par Funding, LG Funding, Bluevine Capital and Kabbage. Upon
11 information and belief, the Trustee alleges that Alea was a personal guarantor of most, if
12 not all the loans, from these companies.
13

14 3.28 Upon information and belief, the Plaintiff alleges that neither of the PPP
15 Loans were forgiven and the Debtor scheduled both lenders as unsecured creditors on
16 bankruptcy schedule E/F, 3.5 and 3.6.
17

18 3.29 The actions of Alea in obtaining \$235,381.07 in PPP loans and
19 inappropriately using the funds for unauthorized purposes caused the Debtor to incur
20 \$235,381.07 of debt which it did not have the ability to repay as it was already insolvent
21 and unable to pay its debts. Incurring the loans was a breach of the fiduciary duty Alea
22 owed to the creditors of the Debtor and the Debtor itself.
23

24 **Bankruptcy Consultation and Setting up of New Company**

25 3.30 In February of 2021, the Debtor contacted David Hill and Hill Law and
26 transferred \$3,000 as a bankruptcy retainer to him.

27 3.31 On April 9, 2021, Getting Dirty Excavating & Trucking, LLC was formed in
28 Washington. The Governor and sole member is Alea Battin.

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3.32 On June 9, 2021 Getting Dirty Excavating & Trucking, LLC. was named as an additional insured on both the vehicle and the equipment policies.

3.33 Alea has testified that Getting Dirty Excavating and Trucking, LLC never operated.

Purchase and Subsequent Sale of Truck Weld Dump Truck & Retention of Funds

3.34 On October 31, 2019, the Debtor entered into an agreement with Pape Kenworth NW to purchase a 2019 Truckweld, Dump Truck for a price of \$243,755.58. ("Truckweld Dump Truck") The credit application was signed by Alea as a Member of Ridgeback. The Debtor made a \$50,000 down payment. The remainder of the purchase price was financed by Paccar.

3.35 On July 23, 2021, Paccar sent a letter demanding that the Debtor bring current the past due payments owing on the contract.

3.36 The Debtor decided to sell the Truckweld Dump Truck. On November 24, 2021, the Debtor obtained a payoff from in the amount of \$150,487.35.

3.37 The Debtor sold the Truckweld Dump Truck on December 1, 2021, to Loren Watts for \$210,000. \$150,487.00 was paid to Paccar and \$59,512.65 was deposited into the Debtor JP Morgan Chase bank account ("JPMC"). The Debtor reported the \$150,487.00 as the sales price to the DOL, not the \$210,000.

3.38 On December 3, 2021, Alea withdrew \$55,696 of the funds from the Debtors' JPMC bank account. \$22,696 of these funds were used to purchase Cashier's Check #1016416691 made payable to Camillo Properties, Ltd, as payment for a house that Alea Battin was either purchasing or renting on Butter Cup Drive in Texas City, Texas. The other \$33,000 was designated as a payment to Robert Cohen.

3.39 The transfer of the Truckweld Dump Truck was required to be disclosed in answer to question 13.1 on the SOFA. The Debtor stated 2020 KW T880 Dump Truck -

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1 \$159,750- Returned to Other Company. This statement is not accurate. The Truck was not
2 returned, it was sold, and the debtor made almost a \$60,000 profit on the sale, the vast
3 majority of which was then transferred to Alea.

4 **Transfers to Lending Club**

5 3.40 Within two years of the Petition Date, the Debtor made transfers to the
6 Lending Club of at least \$12,800 and at least \$28,160 within four years of the Petition
7 Date.

8 3.41 Upon information and belief, the Plaintiff alleges that the obligor on the
9 Lending Club obligation is Alea Battin not the Debtor.
10

11 3.42 The Lending Club is not listed as a creditor on the Debtor's bankruptcy
12 schedules.

13 3.43 Upon information and belief, the Plaintiff alleges that the transfers by the
14 Debtor to the Lending Club were avoidable fraudulent transfers because there was no
15 obligation owing by the Debtor to the Lending Club.
16

17 **Transfers to Cashable**

18 3.44 The Debtor started making transfers to Cashable on February 2, 2021, two
19 days before the Debtor transferred \$3,000 to the Hill Law Firm.

20 3.45 Upon information and belief, the Plaintiff alleges that Cashable is a firm that
21 sells both cashable and redeemable guaranteed investment certificates ("GIC").

22 3.46 Upon information and belief, the Plaintiff alleges that a GIC is a liquid
23 investment which has a one-year term but locks the investment in for only 30 to 90 days.
24 Once the locked-in period expires, the GOC can be cashed out without penalty. GIC's are
25 very common in Canada.
26

27 3.47 Upon information and belief, the Plaintiff alleges that the Debtor did not
28 have a relationship with Cashable and had no obligation to pay Cashable.

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1 3.48 Upon information and belief, the Plaintiff alleges that the Debtor made at
2 least 40 transfers of \$799.00 each to Cashable over the time period of February 2, 2021
3 through April 30, 2021.

4 3.49 Upon information and belief, the Plaintiff alleges that within one year of the
5 Petition Date the Debtor made payments to Cashable in the amount of at least
6 \$31,960.00.

7 3.50 Cashable is not listed as a creditor on the Debtor's bankruptcy schedules.

8 3.51 If the payments to Cashable were for a GIC held in the name of the Debtor,
9 Cashable is holding property of the estate that should be turned over to the Trustee.
10

11 3.52 The Debtor's schedules do not disclose any GIC's it owns.

12 3.53 Upon information and belief, the Plaintiff alleges that the transfers to
13 Cashable were made with actual intent to hinder, delay or defraud the creditors of the
14 Debtor, including the taxing authorities, and to prevent the creditors from obtaining and
15 liquidating the assets of the Debtor.

16 **Transfers to Robert Cohen**

17 3.54 Robert Cohen was an employee of the Debtor. He is also an authorized
18 user on the Chase Bank debit card.

19 3.55 On April 3, 2021, Alea withdrew \$17,618.00 from the Debtor's JPMC bank
20 account and purchased Cashier's Check 1016415962 issued by JPMC, made payable to
21 Robert Cohen in the amount of \$17,618.00.
22

23 3.56 Alea testified that in October, 2021 the Debtor gave Robert Cohen a 1974
24 Kenworth W 900 Dump Truck, allegedly in payment of back wages the Debtor owed him of
25 \$35,000.
26

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1 3.57 Upon information and belief, the Plaintiff alleges that if the title to the truck
2 remains in the name of the Debtor, and if title was in fact transferred it was in late
3 November or early December of 2021.

4 3.58 Upon information and belief, the Trustee alleges that Robert Cohen was not
5 owed any back wages, or was not owed \$35,000 of back wages, and the Debtor did not
6 receive reasonably equivalent value in exchange for the transfer of the truck.

7 3.59 On December 3, 2021, Alea withdrew \$55,696.00 from the Debtor's Chase
8 bank account and on the withdrawal slip indicated \$22,696 was for a Cashier's Check for
9 Camillo Properties and \$33,000 was for Robert Cohen.

10 3.60 Upon information and belief, the \$50,608 was transferred to Robert Cohen
11 but there was no antecedent debt owing between the Debtor and Mr. Cohen, and as such
12 the transfers constitute fraudulent transfers.
13

14 3.61 Alternatively, upon information and belief, the Plaintiff alleges that the
15 Debtor owed an antecedent debt to Mr. Cohen and the transfer of the \$33,000 was made
16 while the debtor was insolvent, within 90-days of the Petition Date, and resulted in his
17 receiving more than he would have received had the payment not been made and more
18 that what he would receive under a bankruptcy distribution.
19

20 3.62 Upon information and belief, the Plaintiff alleges that the transfers to Robert
21 Cohen were made with actual intent to hinder, delay or defraud the creditors of the Debtor,
22 including the taxing authorities, and to prevent the creditors from obtaining and liquidating
23 the assets of the Debtor.

24 **Transfer to Randy Kan**

25 3.63 The Debtor purchased a 2015 Dodge 4500 Utility Flatbed Truck ("Flatbed
26 Truck") from Randy Kan in July, 2019. According to the testimony of Alea, when it was
27

1 purchased, it had been totaled and the Debtor refurbished it so the Debtor could use it as
2 a flatbed work truck.

3 3.64 The 2015 Dodge Truck was listed as an insured vehicle on the Debtor's
4 Liberty Mutual insurance policy. It was added to the policy in early June, 2018. The cost
5 was listed as \$40,273 when it was added to the policy. There was no lien holder added to
6 the policy when the Dodge Truck was added.

7 3.65 In answer to question 13.2 on the SOFA the Debtor stated that the 2015
8 Dodge Truck was returned to Randy Kan in October, 2021. Alea confirmed that the
9 Flatbed Truck was given to Mr. Kan in late 2021. Upon information and belief, the Plaintiff
10 alleges that the transfers were made in late November if at all, as title appears to still be in
11 the name of the Debtor.
12

13 3.66 Upon information and belief, the Plaintiff alleges that the Debtor was
14 insolvent on the date of the transfer to Kan.

15 3.67 Upon information and belief, the Plaintiff alleges that the 2015 Dodge Truck
16 was owned free and clear by the Debtor.

17 3.68 Upon information and belief, the Plaintiff alleges that there was no
18 antecedent debt owing to Randy Kan by the Debtor
19

20 3.69 According to the testimony of Alea, when the truck was returned it had a
21 value of \$40,000.

22 3.70 Upon information and belief, the Plaintiff alleges that Randy Kan paid no
23 consideration to the Debtor or minimal consideration for the transfer of the 2015 Dodge
24 Truck to him, even though the value of the truck was approximately \$40,000.

25 3.71 Upon information and belief, the Plaintiff alleges that the Debtor did not
26 receive reasonably equivalent value in exchange for the transfer.
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1 3.72 Upon information and belief, the Plaintiff alleges that there were other
2 transfers made to or for the benefit of Defendants Kan which are avoidable.

3 3.73 Upon information and belief, the Plaintiff alleges that the transfer of the
4 truck to Randy Kan were made with actual intent to hinder, delay or defraud the creditors
5 of the Debtor, including the taxing authorities, and to prevent the creditors from obtaining
6 and liquidating the assets of the Debtor.

7 **Transfers to Javines**

8 3.74 Alea testified that the Debtor borrowed money from her parents, Williams
9 and Donna Javines, who are insiders of the Debtor. The first time they loaned \$25,000.
10 Upon information and belief, the Plaintiff alleges that the loan was made to Battin and
11 Alea, not Ridgeback.

12 3.75 Upon information and belief, the Plaintiff alleges that the Debtor signed a
13 Promissory Note for at least \$25,000 and eventually paid it all back.

14 3.76 Upon information and belief, the Plaintiff alleges that the Debtor did not
15 receive reasonably equivalent value in exchange for the payment of \$25,000 to the
16 Javines.

17 3.77 On July 30, 2020, the Javines made a check payable to Alea Battin in the
18 amount of \$19,000. The check was deposited into Battin's personal WSECU bank
19 account.

20 3.78 Alea Battin did not deposit \$19,000 into the Ridgeback bank account.
21 Rather the funds were largely used for personal expense.

22 3.79 On October 13, 2020, Ridgeback made check number 12123501 payable
23 to William Javines in the amount of 15,583.33.

24 3.80 Upon information and belief, the Plaintiff alleges that there were other
25 transfers made to or for the benefit of the Javines which are avoidable.

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1 3.81 Upon information and belief, the Plaintiff alleges that the Debtor did not
2 receive any benefit or reasonably equivalent value for the transfers it made to the Javines.

3 3.82 Upon information and belief, the Plaintiff alleges that the transfers to the
4 Javines were made with actual intent to hinder, delay or defraud the creditors of the
5 Debtor, including the taxing authorities, and to prevent the creditors from obtaining and
6 liquidating the assets of the Debtor.

7 **Transfers to Alea Battin**

8 3.83 Upon information and belief, the Plaintiff alleges that in the one year period
9 prior to the Petition Date, Alea made cash withdrawal and ATM withdrawals of at least
10 \$15,000 and she withdrew at least \$20,000 in cash in the two year period prior to the
11 Petition Date.

12 3.84 Alea withdrew \$55,696 in cash when the Debtor sold the Truckweld Dump
13 Truck.

14 3.85 The Debtor made payments to the Lending Club within two years of the
15 Petition Date in the amount of \$12,800, and \$28,160 within four years, which were made
16 to or for the benefit of Alea.

17 3.86 There were substantial transfers to Alea from the Debtor in payment of
18 "note." However, Alea testified there are no Promissory Notes between her and the
19 Debtor. Thus, there was no antecedent debt that existed between the Debtor and Alea.
20 As such, any transfers made to Alea in payment of the note were fraudulent.

21 3.87 The Debtor made transfers to Cashable, which upon information and
22 belief, the Plaintiff alleges were for the benefit of Alea.

23 3.88 Upon information and belief, the Plaintiff alleges that there were other
24 transfers made to or for the benefit of Alea which are avoidable.

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1 3.89 Upon information and belief, the Plaintiff alleges that the Debtor did not
2 receive any benefit or reasonably equivalent value for the transfers it made to Alea.

3 3.90 Alea made the decision to seek two PPP Loans and use the proceeds for
4 purposes not authorized under the CARES act.

5 **New Line Lawsuit**

6 3.91 Alea Battin as member RBE signed a preliminary contract with New Line
7 Services DBA Agate Asphalt for site work and paving to be completed for the CHI
8 Franciscan project located at 4207 Kitsap Way, Bremerton, WA 98312. RBE was
9 subcontractor for Sellen construction for site work including grading, paving, curbing and
10 other underground utilities.
11

12 3.92 On April 29, 2020, Agate completed their work. Upon information and belief,
13 the Plaintiff alleges that although Ridgeback was paid by the general contractor it only
14 remitted a portion of the amount owed to New Line/ Agate Asphalt. On November 9, 2020,
15 the Debtor signed a Promissory Note to New Line for \$146,275.67, with payments
16 commencing in December, 2020. The Debtor made the first payment and did not make any
17 further payments.
18

19 3.93 On July 28, 2021, New Line filed a complaint in Kitsap County Superior
20 Court to collect on the note, case no. 21-2-01124-18.

21 3.94 On December 3, 2021, a judgment was entered against the Debtor in the
22 amount of \$143,747.51 in favor of New Line.

23 3.95 On February 4, 2022, an order was entered requiring the Debtor to appear
24 for a Supplemental Proceeding.

25 **Failure to disclose information on the schedules**

26 3.96 The Debtor operated in 2021 and, yet in answer to question 1 on the
27 Statement of Financial Affairs ("SOFA") it indicates it had no income whatsoever in 2021.

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1 3.97 In Answer to question 3 on the SOFA the Debtor failed to disclose all of the
2 transfers within 90 days of the Petition Date, including the transfers to Alea and Robert
3 Cohen.

4 3.98 In answer to question 4 on the SOFA, the Debtor failed to disclose transfers
5 made within one year of the Petition Date that were made to or for her benefit or the
6 benefit of other insiders, mainly Alea.

7 3.99 The Debtor failed to disclose that on May 2, 2021, the Debtor sold a 1997
8 Ford F350 Vin ending 1010 to Kitsap Quarry for \$4,500.

9
10 **Solvency**

11 3.92 The Debtor was insolvent from the date it started operating its business .
12 There was no capital contribution ever made by the principals. Alea testified that the only
13 way they could pay the bills was by using their personal credit cards. Alea also testified
14 that they could not pay for the heavy equipment expenses, suppliers and the taxes
15 because there was not enough money to pay everything. She testified that when Battin
16 was alive and operating the company he believed in paying payroll first, materials and
17 supplies for the jobs second and taxes third.

18 3.93 The Debtor had virtually no assets which were owned free and clear of liens.
19 Most were secured by the lender. Further, Pacific Leasing had a UCC-1 against all assets
20 of the Debtor.

21 3.94 Upon information and belief, the Plaintiff alleges that the Debtor was
22 insolvent and unable to pay its debts as they became as evidenced by the lack of
23 payment to the taxing authorities, the debt owed to New Line and its reliance on factoring
24 and semi-hard/hard money loans to operate the company.

25 3.95 The Debtor's bankruptcy schedules list assets of \$130,300 and liabilities of
26 \$1,253,649.97.

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1 3.96 Alea testified that by that ty the end of 2019 the Debtor did not have enough
2 income to service its tax debt and other obligations.

3 **IV. FIRST CAUSE OF ACTION: PREFERENTIAL TRANSFERS**
4 **11 U.S.C. §547 OF THE CODE DEFENDANTS ALEA, KAN, COHEN AND JAVINES**

5 1.1 Paragraphs I through III and all subsections thereof, are hereby repeated
6 and incorporated as though fully set forth herein.

7 1.2 The transfers by the Debtor to Defendants Kan and Cohen were made
8 within 90-days of the Petition Date and the transfers to Defendants Alea and Javines were
9 made within one within one year of the Petition Date and all constitute transfers by the
10 Debtor of an interest in property.

11 1.3 Defendants Alea and Javines are insiders of the Debtor as defined in
12 Section 101(31) of the Bankruptcy Code because Defendant Alea is the managing
13 Member and person in control of the Debtor and the Javines are her parents.

14 1.4 The transfers from the Debtor to Defendants Alea, Javines, Kan and Cohen
15 were made for or on account of an antecedent debt owed by the Debtor to Defendants
16 Alea, Kan, Cohen and Javines.

17 1.5 At the time of the transfers referred to in Paragraph III, above, the Debtor
18 was insolvent.

19 1.6 The transfers referred to in Paragraph III, above, enabled Defendants Alea,
20 Kan, Cohen and Javines to receive more than they would have received if the case were a
21 case under Chapter 7 of Title 11 of the United States Code, the transfers had not been
22 made, and they received payment of their debts to the extent provided by the provisions of
23 Title 11 of the United States Code.

24 **V. SECOND CAUSE OF ACTION FRAUDULENT TRANSFERS UNDER**
25 **SECTION 548 BANKRUPTCY CODE – AII DEFENDANTS**

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1 2.1 Sections I through IV and all subsections thereof are hereby repeated and
2 incorporated as though fully set forth herein.

3 2.2 Transfers were made by the Debtor to or for the benefit of all of the
4 Defendants within two years of the Petition Date.

5 2.3 The Debtor did not receive reasonably equivalent value in exchange for the
6 transfers to all of the Defendants as set forth in paragraph III above.

7 2.4 The Debtor was insolvent on the date of the transfers set forth in paragraph
8 III above which were made to or for the benefit of all of the Defendants.

9 2.5 The transfers referred to in paragraph III above to all of the Defendants
10 were made with actual intent to hinder, delay and defraud creditors to whom the Debtor
11 was indebted before or after the date of the transfers, including its creditor and the State
12 and Federal taxing agencies.

13 2.6 The transfers to all of the Defendants set forth in paragraph III above are
14 avoidable pursuant to 11 U.S.C. §548 as stated therein as they were either a) made with
15 actual intent to hinder, delay or defraud creditors to whom the Debtor was indebted on or
16 after the date of the transfers; or b) the Debtor received less than reasonably equivalent
17 value in exchange for the transfers, became insolvent or was insolvent at the time of the
18 transfer, leaving the Debtor with an unreasonably low capital account or leaving the
19 debtor unable to pay its debts as they became due.

20 2.7 The transfers made by the Debtor to all Defendants as set forth in
21 paragraph III above are avoidable by the Plaintiff under 11 U.S.C. §548(a)(1) or (a)(2).

22 **VI. THIRD CAUSE OF ACTION:**
23 **FRAUDULENT TRANSFERS UNDER FEDERAL LAW**
24 **ALL DEFENDANTS**

25 3.1 Plaintiff alleges and incorporates by reference all the preceding paragraphs
26 of this Complaint as if fully set forth herein.

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1 3.2 As described above, the Debtor improperly and fraudulently transferred
2 substantial funds to all of the Defendants.

3 3.3 At the time of the Transfers set forth above the Debtor and its principals
4 knew it had significant outstanding liabilities owed to the IRS.

5 3.4 The Transfers were made to or for the benefit of All Defendants.

6 3.5 The Debtor made the Transfers with the actual intent to hinder, delay, or
7 defraud the creditors or future creditors of the Debtor.

8 3.6 The Transfers set forth above were to or for the benefit of insiders of the
9 Debtor.

10 3.7 The Debtor did not retain possession or control of the Transfers after the
11 Transfers were made.

12 3.8 The Transfers were not disclosed but rather concealed from the public and
13 Debtor's creditors because the Debtor is a privately held company.

14 3.9 Before the Transfers were made, the Debtor had been sued or threatened
15 with suit to recover its unpaid taxes.

16 3.10 The Debtor concealed assets from its present and future creditors through
17 the Transfers.

18 3.11 At the time the Transfers were made, or thereafter, the United States of
19 America was a creditor of the Debtor.

20 3.12 The United States of America (the "United States") is a creditor of the
21 Debtor holding a Section 507 priority claim against the Debtor in the amount of
22 \$782,475.00 and an unsecured claim against the Debtor in the amount of \$60,760.35. The
23 IRS would have a right under applicable non-bankruptcy law, including without limitation,
24 28 U.S.C. §3304(b)), to avoid the Transfers.
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1 3.13 The Debtor was effectively insolvent at the time of the Transfers or became
2 insolvent after the Transfers to All Defendants.

3 3.14 The Transfers occurred shortly before or shortly after substantial debts
4 were continuously being incurred with respect to Debtor's unpaid tax liabilities.

5 3.15 At the time of the Transfers, the Debtor would not be able to pay its debts
6 and liabilities as they became due because of its debts owed to the IRS, the State of
7 Washington taxing agencies its secured creditors, and its unsecured creditors.

8 3.16 At the time of the Transfers, the sum of the Debtor's debts including its tax
9 liabilities was greater than all of the Debtor's assets.
10

11 3.17 As a result of the Transfers, the Debtors and their creditors have been
12 harmed and damaged.

13 3.18 All of the Defendants benefited from the fraudulent conveyance of the
14 Transfers.

15 3.19 Under 11 U.S.C. §544(b)(1) a trustee may "step into the shoes" of an
16 unsecured creditor to recover transfers such actual creditor would have been able to
17 recover save for the filing of the bankruptcy case.
18

19 3.20 A trustee's action under § 544(b) is timely if the unsecured creditor's claim
20 may be timely brought under the applicable law including, but not limited to, 28 U.S.C. §
21 3306(b)(1), which provides that the United States may bring an action to avoid a transfer
22 done with actual intent to hinder, delay, or defraud a creditor within two years after the
23 transfer was, or reasonably could have been, discovered by the claimant. This claim is
24 timely pursuant to 11 U.S.C. § 546(a).

25 3.21 The fraudulent nature of the Transfers was not and could not reasonably have
26 been discovered by the Debtors' creditors, including without limitation, the United States,
27 or the Plaintiff until after the Petition date.
28

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1 3.22 Under 22 U.S.C. §544, a transaction that is voidable by a single, actual
2 unsecured creditor may be avoided in its entirety, regardless of the size of the creditor's
3 claim. In other words, even if the triggering creditor is owed only a nominal amount, the
4 entire transfer can be avoided and used to satisfy claims of creditors.

5 3.23 Under 11 U.S.C. §§544(b), 550(a) and 551, 28 U.S.C. § 3304, and/or other
6 applicable law, Plaintiff is entitled to avoid and recover the Transfers or value of the
7 distributions transferred to all of the Defendants, with interest, and preserve the recovered
8 Transfers for the benefit of the estate.

9
10 **VII. FOURTH CAUSE OF ACTION: FRAUDULENT CONVEYANCES**
11 **11 U.S.C. §544 AND RCW 19.40. TO ALL DEFENDANTS**

12 4.1 Paragraphs 1 through VI and all subsections thereof are hereby repeated
13 and incorporated as though fully set forth herein.

14 4.2 Transfers were made to or for the benefit of all Defendants within four years
15 of the Petition Date.

16 4.3 The Debtor made the transfers set forth in paragraph III above which are
17 avoidable pursuant to RCW 19.40.010 et seq. as stated therein.

18 4.4 The transfers by the Debtor to all Defendants as set forth in Paragraph III
19 above were made with actual intent to hinder, delay or defraud creditors of the Debtor.

20 4.5 The transfers by the Debtor to all Defendants as set forth in Paragraph III
21 were made without the Debtor receiving reasonably equivalent value in exchange for the
22 transfers.

23 4.6 The transfers by the Debtor to all Defendants as set forth in Paragraph III
24 above caused the Debtor to engage or thereafter engage in business for which the
25 remaining assets of the Debtor were unreasonably small in relation to the business or
26 transactions.
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1 4.7 The transfers by the Debtor to all Defendants should have caused the
2 Debtor to believe that it would incur debts beyond its ability to pay as they became due.

3 4.8 The transfers by the Debtor to all Defendants as set forth in Paragraph III
4 above were not made in exchange for reasonably equivalent value.

5 4.9 The Debtor was insolvent on the date of each, and every transfer set forth
6 in paragraph III above. Its assets were less than its liabilities and it was not paying its
7 obligations as they became due. Alternatively, the Debtor became insolvent as a result of
8 the transfers set forth in paragraph III above.

9
10 **VIII. FIFTH CAUSE OF ACTION: TURNOVER OF**
11 **PROPERTY OF THE ESTATE - §542 OF THE BANKRUPTCY CODE**
12 **DEFENDANTS ALEA, COHEN AND KAN AND CASHABLE**

13 5.1 Paragraphs I through VII and all subsections thereof are hereby repeated and
14 incorporated as though fully set forth herein.

15 5.2 Defendants Alea, Cohen, Kan and Cashable are in possession, custody or
16 control of property that the Plaintiff/Trustee may use and/or sell to pay the obligations of
17 this Debtor. Specifically, personal property that belongs to the Debtor.

18 **IX. SIXTH CAUSE OF ACTION : BREACH OF FIDUCIARY DUTY**
19 **DEFENDANT ALEA BATTIN**

20 7.1 The Trustee realleges and incorporates by this reference the allegations set
21 forth in paragraphs I through IX.

22 7.2 The transfers set forth in paragraph III above to Defendant Alea were
23 unlawful, in violation of RCW 23B.06.400, and thus constituted a breach of Defendants
24 Alea Battin's fiduciary duties owed to the Debtor and its creditors as the Debtor did not
25 receive reasonably equivalent value in exchange for those transfers.

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1 7.3 Defendant Alea Battin failed to discharge her duties to the Debtor in good
2 faith, failed to exercise ordinary prudence, and acted contrary to the best interests of the
3 Debtor.

4 **X. SEVENTH CAUSE OF ACTION:**
5 **PRESERVATION OF AVOIDED TRANSFERS**

6 10.1 Paragraphs I through IX are hereby repeated and incorporated as though
7 set forth herein.

8 10.2 Any and all transfers avoided under the claims for relief in this complaint
9 are preserved for the benefit of the estate pursuant to 11 U.S.C. §§ 550 and 551.

10 **XI. PRAYER FOR RELIEF**

11 The Plaintiff asks for the following relief:

12 11.1 That the Court find the transfers to Defendants Alea, Kan, Cohen and
13 Javines set forth in Paragraph III above constituted preferential transfers of property of
14 the estate that is avoidable pursuant to §547 and should be avoided.

15 11.2 That the Court find the transfers of the property to all of the Defendants
16 constitute fraudulent transfers pursuant to §§ 548 and 28 U.S.C. § 3304(b) should be
17 avoided.

18 11.3 That the Court find that the transfers of property of the estate to Defendants
19 Alea, Javines and Lending Club should be avoided pursuant to § 544 and RCW 19.40. *et*
20 *seq.*

21 12.2 That Defendants Alea, Cohen and Kan be ordered to turnover property of
22 the estate.

23 12.3 That the Court determine Defendant Alea Battin violated her fiduciary duty
24 owed to the Debtor and as such is personally liable to the Debtor for all damages arising
25 from her breach of her fiduciary obligation.

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12.4 That the Court find the avoided transfers are preserved for the benefit of the estate.

12.5 That this Court enter an order consistent with the Complaint and a judgment in an amount to be determined against all Defendants in favor of the Chapter 7 Trustee, and for such other relief as this Court deems just and proper. .

DATED this 16th day of February, 2024.

WOOD & JONES, P.S.

Isl Denice E. Moewes

Denice E. Moewes, WSBA #19464
Attorney for Chapter 7 Trustee
Edmund J. Wood

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